Google, Inc. v. Affinity Engines, Inc. Doc. 17 Att. 5

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GOOGLE INC. and ORKUT.COM LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

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| AFFINITY ENGINES, INC., a Delaware corporation,<br><br>Plaintiff,<br><br>v.<br><br>GOOGLE INC., a Delaware Corporation, ORKUT.COM LLC, a Delaware limited liability company, ORKUT BUYUKKOTEN, individually, and DOES 1-20, inclusive,<br><br>Defendants. | CASE NO.: 104CV020368<br><br>**[PROPOSED] ORDER**<br><br>Complaint Filed May 25, 2004 |

Dockets.Justia.com

Defendant Google Inc.'s ("Google") Motion to Compel Responsive Deposition Witness and to Appoint Discovery Referee came on for hearing before this Court on December 3, 2004 in Department 18 of this Court, the Honorable Justice Harry Brauer presiding. The Court has reviewed the parties' submissions and heard oral argument and good cause appearing it is HEREBY ORDERED THAT: Google's motion is GRANTED.

The 2025(d) deposition of Plaintiff Affinity Engines, Inc. ("AEI") shall be resumed on a date to be agreed upon by the parties. AEI shall designate a representative to provide testimony in response to an amended 2025(d) deposition notice from Google, which Google shall serve on counsel for AEI no less than ten days in advance of the scheduled resumption of the 2025(d) deposition. AEI's witness shall be produced for up to another full day of testimony. The deposition shall be conducted before a discovery referee who shall have the power to direct the witness to respond to questions, rule upon objections and otherwise preside over the deposition. The Court deems appointment of a referee necessary and appropriate based upon its review of the transcript of the initial deposition of AEI's representative. The parties shall agree upon a referee pursuant to CCP § 640(a). If they cannot agree within 10 days of notice, the parties shall follow the procedures of § 640(b) and the Court shall appoint the referee. Google shall initially bear the cost of the discovery referee, with such costs subject to reallocation at the conclusion of the case depending on its outcome.

Google's request for sanctions is DENIED.

AEI may designate Micah Siegel as the PMK.

Dated: 12/25, 2004

THE HONORABLE JUSTICE HARRY BRAUER

Approved as to form.

Counsel for Affinity Engines, Inc.